

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

NATIONAL NAIL CORP.,

Plaintiff,

-vs-

Case No. 05-0061  
Hon: AVERN COHN

B-KAP ENTERPRISES, INC.  
and ALLAN OMLI,

Defendants.

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**ORDER DENYING MOTION  
FOR RECONSIDERATION**

On August 18, 2006 the Court entered an Order on Claim Construction. In construing the phrase “a connecting member” the Court looked to International Publication WO 99/39878 which effectively construed the phrase. The International application was incorporated by reference in the specification of the patent-in-suit. Defendant argues in a motion styled

Motion for Reconsideration of Court’s *Markman*/Claim Construction Ruling or, in the Alternative, to Re-Open Briefing on Claim Construction

that the incorporation is improper because it is prohibited by the Manual of Patent Examining Procedure because it did not meet the test of “essential matter.” The motion is DENIED.

The patent was issued with the incorporated by reference language col. 7: l 65; col. 14: l 53. Also, WO 99/39878 was listed on the facing page of the patent-in-suit as a References Listed/FOREIGN PATENT DOCUMENTS. Lastly, as stated by plaintiff in its

Brief in Opposition to Defendants' Motion for Reconsideration (p. 3):

In ascertaining the intended meaning of the claims, the skilled artisan could certainly read the PCT application, and this Court properly did so as well.

SO ORDERED.

s/Avern Cohn  
AVERN COHN  
UNITED STATES DISTRICT JUDGE

Dated: September 20, 2006

I hereby certify that a copy of the foregoing document was mailed to the parties of record on this date, September 20, 2006, by electronic and/or ordinary mail.

s/Julie Owens  
Case Manager, (313) 234-5160